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In The

Supreme Court of the United States

OCTOBER TERM, 1992

STATE OF WISCONSIN, *Petitioner,*

v.

TODD MITCHELL, *Respondent.*

*On Writ of Certiorari to the
Supreme Court of Wisconsin*

BRIEF OF THE NATIONAL ASIAN PACIFIC AMERICAN
LEGAL CONSORTIUM, ET AL., AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER

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IN SUPPORT OF PETITIONER

INTEREST OF *AMICI CURIAE*

The National Asian Pacific American Legal Consortium, American Citizens for Justice, the Asian Law Alliance, Chinese for Affirmative Action, the Chinese American Citizens Alliance, the Committee Against Anti-Asian Violence, the Japanese American Citizens League, the National Asian Pacific American Bar Association, and the Organization of Chinese Americans submit this brief as *amici curiae* in support of petitioner, the State of Wisconsin. Counsel for both parties have consented to the submission of this brief;

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letters of consent have been filed with the Clerk of the Court.

The *amici curiae* are organizations dedicated to the protection of civil rights for the Asian and Pacific Islander communities in the United States. All *amici* have advocated for the passage of hate crimes legislation, and are active members of the National Network Against Anti-Asian Violence, a coalition of organizations that monitor and respond to incidents of hate violence throughout the country.

Statements of interest for each organization are contained in Appendix A.

This case raises issues of significant concern to *amici curiae*. Racial violence has become a serious problem throughout the country, and laws that deter and punish anti-Asian violence are of vital importance to *amici* and the individuals they represent. While they are vigorous defenders of civil liberties and the freedom of speech, *amici curiae* believe that legislative efforts such as the Wisconsin penalty enhancement statute are necessary in the fight against racial violence. Violent threats and acts committed because of the victim's membership in a protected class are simply not protected speech.

SUMMARY OF ARGUMENT

Discriminatory violence — violence committed because of race, national origin, religion, sexual orientation, or other immutable characteristics — has become a serious problem throughout the United States. Violence perpetrated against an individual because of membership in a vulnerable group is an egregious violation of that individual's civil rights, and not only injures the victim, but traumatizes the community to which the victim belongs. Without question, the prevention and punishment of discriminatory violence is a compelling governmental interest.

Hate crimes, which can range from vandalism and property damage to threats, beatings, and killings, are clearly on the rise. Data collected from throughout the country show increases in both the number of crimes committed and the severity of violence. Assaults and homicides perpetrated because of discrimination have become commonplace.

Anti-Asian violence is an especially grave problem. Dramatic population growth, combined with other factors such as the economic hardship in many communities, the fear of economic competition from Pacific Rim countries, and the past participation of the United States in wars on Asian soil, have made Asians and Pacific Islanders particularly vulnerable to acts of violence. Incidents of violence against Asians have risen at a rate faster than for any other ethnic group. Violence has not been limited to individuals and their homes, and has included attacks against businesses, places of worship, and college campuses.

As a response to the upsurge in racial violence, legislatures throughout the country have enacted statutes designed to deter and to punish hate crimes. Hate crimes laws send a special message to law enforcement officials and to the public that certain types of conduct are intolerable. Because an act of violence committed because of bias is more reprehensible than the act alone, many legislatures have enacted penalty enhancement laws, such as the Wisconsin statute at issue, that increase the punishment for violent crimes committed because of race, religion, sexual orientation, and other characteristics.

The Wisconsin Supreme Court erred when it struck down the statute as violative of the First Amendment. The statute does not affect free expression because it punishes violent conduct that is wholly lacking in expressive elements. The lower court misconstrued the statute by attempting to separate the actor's discriminatory intent from the actor's violent conduct. The statute does not punish thought or motive. Rather, it augments punishment because violence was

committed for discriminatory reasons. Like other antidiscrimination laws, the Wisconsin statute forbids certain types of behavior. Just as firing someone from a job, or denying them housing, or preventing them from attending a school may be illegal because it is discriminatory, so too is a violent act that is committed because it is discriminatory.

Even assuming that it affects speech in some way, the Wisconsin statute falls well within this Court's guidelines for valid regulations under First Amendment. The statute is not overbroad, because it merely enhances the punishment for specific types of conduct. Although a defendant's prior statements may be used to determine liability, the statute does not chill speech. It is well established that prior statements, when relevant, may be used to prove an element of a crime.

The statute also satisfies this Court's standards for regulating expressive conduct. The conduct affected by the law is within the power of government to regulate, the law furthers a compelling interest that is unrelated to the suppression of free expression, and the restriction placed on First Amendment freedoms is minimal and certainly no greater than the state's interest in preventing and punishing violence.

Finally, the statute falls well within the guidelines for content-based regulations established in *R.A.V. v. City of St. Paul*. The statute contains no restrictions on expression and is distinguishable from the ordinance in *R.A.V.* because it regulates criminal acts of violence. The Wisconsin law specifically targets violence committed with discriminatory intent and does not have an effect on speech. The Wisconsin hate crimes statute is thus constitutional, and the decision of the Wisconsin Supreme Court should be reversed.

ARGUMENT

I. HATE CRIMES STATUTES PROMOTE THE COMPELLING GOVERNMENTAL INTEREST IN PREVENTING AND PUNISHING DISCRIMINATORY VIOLENCE

A. Discriminatory Violence Against Asians and Other Protected Minorities is a Serious and Pervasive National Problem

Discriminatory violence — violent threats and acts perpetrated against members of certain groups in society — has been occurring with increasing frequency and severity throughout our nation, causing devastating effects on victims, as well as society as a whole. Violence committed because of race, national origin, religion, sexual orientation or other characteristics has become commonplace, and anti-Asian violence in particular has become a widespread and well recognized problem. See U.S. Comm'n on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990's* 22 (1992) [hereinafter *Civil Rights Issues*].

The history of minority groups in this country is replete with overt racism and hostility that have been fanned into individual and mob violence. See, e.g., U.S. Comm'n on Civil Rights, *Intimidation and Violence: Racial and Religious Bigotry in America* (1990) [hereinafter *Intimidation and Violence*]. As in the past, population growth¹ and overt

¹According to the 1990 census, the Asian population more than doubled between 1980 and 1990, making the Asian and Pacific Islander community one of the fastest growing groups in the United States. U.S. Dept. of Commerce, Bureau of the Census, *1990 Census Profile: Race and Hispanic Origin*, at 1, figure 1 (1991) (population increase of 107.8% between 1980 census and 1990 census).

discrimination against Asians² have engendered the proliferation of anti-Asian sentiment and resultant violence. See *Civil Rights Issues, supra*; U.S. Comm'n on Civil Rights, *Recent Activities Against Citizens and Residents of Asian Descent* (1986) [hereinafter *Recent Activities*].

Many factors have contributed to the increase in anti-Asian sentiment. The United States Civil Rights Commission has identified several causes: (1) racial integration of neighborhoods leading to "move-in" violence; (2) deep-seated racial hatred played upon by organized hate groups; (3) economic competition among racial and ethnic groups; (4) insensitive media coverage of minority groups; and (5) poor police response to hate crimes. *Intimidation and Violence, supra*, at 11-19. In addition, the increase in anti-Asian violence can be attributed to the growth in the Asian American population; increasing economic hardship faced by many communities, coupled with retrenchment in government social service programs; the fear of economic competition from Pacific Rim countries; the United States' past participation in military conflicts on Asian soil; and current world events and affairs, including Japan-bashing and the scapegoating of immigrants by public officials and the media. See *Recent Activities, supra*, at 29-39.

Whatever the root causes, acts of discriminatory violence,

²Past governmental discrimination against Asians and Pacific Islanders has ranged from anti-Asian court decisions, see, e.g., *People v. Hall*, 4 Cal. 399 (1854) (Chinese and other non-white people prohibited from testifying against whites); *Ozawa v. United States*, 260 U.S. 178 (1922) (Japanese forbidden from obtaining American citizenship), to exclusionary immigration laws, see, e.g., Chinese Exclusion Act, Ch. 126, 22 Stat. 58 (1882); Tydings-McDuffie Act, Ch. 84, 48 Stat. 456 (1934) (limiting Filipino immigration to quota of fifty per year), to the forced incarceration of Japanese Americans during World War II, see Executive Order 9066, 3 C.F.R. 1092 (1938-43); see also *Korematsu v. United States*, 323 U.S. 214 (1944).

including acts of anti-Asian violence, are clearly on the rise. In Los Angeles County, for example, from 1989 to 1990, there was a 146% increase in the total number of hate crimes (550 incidents), and a 65% increase in racially based hate crimes (275 incidents). Moreover, there was an increase of 257% (to 49 incidents), or 17.8% of the total, that were directed at Asians. L.A. County Comm'n on Human Relations, *Hate Crime in Los Angeles County 1990*, at Summary, 2, 7 (1991). From 1990 to 1991, there was a 27% increase in the total number of racially discriminatory hate crimes and a 22% increase in the total number of overall hate crimes, the highest number of acts ever recorded. L.A. County Comm'n on Human Relations, *Hate Crime in Los Angeles County 1991*, at 1 (1992). Out of a total of 351 racially related hate crimes, fifty-four, or 15.1%, were directed at Asians and Pacific Islanders. *Id.* at 1-2.

The pattern is similar in other metropolitan areas with large Asian populations. In New York City, between January and August of 1990, reported hate crime incidents against Asians showed the highest increase among all ethnic groups, rising from thirteen incidents during 1989 to twenty-eight incidents in 1990. See *Asian Week*, Apr. 5, 1991, at 1. In New Jersey, ninety-two bias incidents against Asian Americans were reported, representing over half of the ethnic bias incidents for the year. N.J. State Police Uniform Crime Reporting Unit, *1991 Bias Incident Report* 6 (1992). A recent report by the Pennsylvania attorney general indicated that the number of reported hate crimes increased 60% between the 1990-91 fiscal year and the 1991-92 fiscal year; hate crimes against Asians increased by over 100%. See Moran, *Hate Crimes Increase in Pennsylvania*, Philadelphia Daily-News, Oct. 27, 1992. Nationwide, the Department of Justice reported an increase of 62% in hate crimes perpetrated against Asians within a one year period. See Yamauchi, *For Asian Americans, U.S. Climate of 90's is More Hostile*, The Monitor,

May 1990, at 13.³

Moreover, reported numbers no doubt undercount the actual number of incidents, because of inadequate and incomplete governmental record keeping. Further, because recent immigrants and refugees comprise a large proportion of the Asian population, many individuals are reluctant to report incidents because of fear, language and cultural barriers, and ignorance of their legal rights. *Civil Rights Issues, supra*, at 49-59.⁴

Hate crimes against Asians and other targeted groups have run the gamut from racial slurs and graffiti to beatings, shootings, and killings. See Appendix B. For example, in 1982, Vincent Chin, a Chinese American, was beaten to death by two unemployed white auto workers in Detroit, Michigan because the men blamed Chin for the influx of Japanese

³Recent statistics compiled by the Federal Bureau of Investigation pursuant to the Hate Crime Statistics Act, 28 U.S.C.A. § 534 (West 1992), reported a total of 4,558 hate crimes in 1991. U.S. Dep't of Justice, Fed. Bureau of Investigation, Press Release, Dec. 22, 1992. Hate crimes against Asians and Pacific Islanders constituted six percent of the total number of incidents, which represents twice the percentage that Asians constitute in the total U.S. population. *Id.* Because 1991 was the first year that statistics were compiled and because data were obtained through independent reports from state agencies, the number of reported incidents is far from complete. Data for Asians and Pacific Islanders are especially lacking because several states, including California, which has forty percent of the country's total Asian population, did not participate in the data collection process.

⁴Recent immigrants are often reluctant to report discriminatory acts of violence to the police not only because of limited English-speaking skills and distrust of police, but also because of fear of retaliation and re-victimization and because of the possibility of jeopardizing their immigration status. Furthermore, many police departments lack sensitivity to the needs of immigrant and refugee populations, lack bilingual staff, and fail to inform victims of their legal rights when crimes are reported. See *Civil Rights Issues, supra*, at 49-67.

automobiles and the loss of their jobs. See *Recent Activities, supra*, at 43-44. In 1987, Kaushal Sharan was assaulted with a baseball bat by several youth in Jersey City, New Jersey, at a time when local gangs were targeting Asian Indians. In 1989, Patrick Purdy, who had developed a hatred of Southeast Asians because of the Vietnam War, killed five and wounded more than twenty children by firing an assault rifle into a Stockton, California schoolyard. See *Report to Cal. Atty. Gen. John K. Van de Kamp on Patrick Purdy and the Cleveland School Killings* 10-16 (Oct. 1989). In 1989, Ming Hai "Jim" Loo, a Chinese American, was beaten to death in Raleigh, North Carolina, by white men who blamed him for the death of Americans in Vietnam. The men attacked Loo "because they didn't like Vietnamese" and because "their brothers went over to Vietnam in the war, and they never came back." See Bailey, *Chinese Man Buried as Friends Express Fear*, Raleigh News/Observer, Aug. 6, 1989, at 23A. On August 21, 1992, a nineteen-year-old Vietnamese student was killed in Coral Springs, Florida after he had attended a party and was taunted with racial remarks about his Asian ancestry. A gang of fifteen men chased him down like a "hunted deer" and beat him to death. *Bias-Incited Beating Death of a Vietnamese Stuns a Florida Town*, N.Y. Times, Aug. 23, 1992.

Increasingly, severe forms of discriminatory violence, including assaults and killings, have taken place throughout the country. According to data from Los Angeles County, assaults have now overtaken graffiti as the primary form of hate violence; for the first time in the twelve years of reporting within the County, there were two racially related homicides in one year. L.A. County Comm'n on Human Relations, *Hate Crime in Los Angeles County 1991*, at 5 (1992). According to Klanwatch, a project of the Southern Poverty Law Center, there were a record twenty-five racial murders nationwide in 1991, the deadliest year in its eleven-year history of tracking hate crimes. Southern Poverty Law Center, *Deadly Hatred on American Streets*, Klanwatch

Intelligence Rep. No. 59, at 19 (Feb. 1992). Klanwatch also noted a significant increase in discriminatory assaults, acts of vandalism, and cross burnings; California and Texas led the nation with five hate murders each. *Id.*

A recent article revealed that scientists have found that hate crimes are "far more lethal than other kinds of attacks, resulting in the hospitalization of their victims four times more often than is true for other assaults. . . . Half [of the bias incidents] involved assaults. Of these, the victims were injured in 74 percent of the cases; the national average for injury to an assault victim is 29 percent. More telling, at least one victim required hospitalization in 30 percent of the prejudice-based assaults, while for other assaults the average rate of injuries that severe is 7 percent." Goleman, *As Bias Crimes Seem to Rise, Scientists Study Roots of Racism*, N.Y. Times, May 29, 1990, § C, at 1, col. 1.

Furthermore, violence perpetrated against a person because of membership in a vulnerable group not only affects the victim, but traumatizes the community to which the victim belongs. See Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 Mich. L. Rev. 2320, 2335-41 (1989); Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 Harv. C.R.-C.L. L. Rev. 133, 135-36 (1982). In *State v. Plowman*, 314 Or. 157, 838 P.2d 558 (1992), in which the Oregon Supreme Court upheld the constitutionality of the state's intimidation statute, the court aptly summarized the problem:

[C]ausing physical injury to a victim because of the perception that the victim belongs to one of the specified groups creates a harm to society distinct from and greater than the harm caused by the assault alone. Such crimes — because they are directed not only toward the victim but, in essence, toward an entire group of which the victim is perceived to be a

member — invite imitation, retaliation, and insecurity on the part of persons in the group to which the victim was perceived by the assailants to belong.

Without question, violence directed against victims because of their immutable characteristics is a particularly egregious violation of their civil rights. Thus, the government's interest in preventing and punishing discriminatory violence committed against Asians and other minorities is an important and substantial one; indeed, as this Court has recently indicated, the government's interest is compelling. *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538, 2549 (1992).

B. Hate Crimes Laws Prevent and Punish Discriminatory Violence

As a response to the growing and widespread problem of discriminatory violence, state and local governments across the country have enacted statutes that monitor hate crimes and prohibit specific acts of violence, intimidation, and coercion. See Appendix C; see also Anti Defamation League of B'nai B'rith, *Hate Crimes Statutes: A 1991 Report*, at 1-2, 22 (1991); Nat'l Inst. Against Prejudice & Violence, *Striking Back at Bigotry: Remedies Under Federal and State Laws for Violence Motivated By Racial, Religious, and Ethnic Prejudice* 61-65 (1986 & Supp. 1988). The United States Congress has also recognized the gravity of the problem and has passed the Hate Crime Statistics Act, Pub. L. No. 101-275, 104 Stat. 140 (1990) (codified at 28 U.S.C.A. § 534 (West 1992)), to monitor and collect data on hate crimes at the national level.

Laws that specifically address the problem of discriminatory violence communicate to individuals who would commit acts of violence that the local community or state does not tolerate such acts. These laws also encourage the police to act with particular dispatch in handling discriminatory hate crimes. As the United States Civil Rights Commission has noted: "Effective police responses to incidents of racial and religious violence are necessary to keep such incidents from

spreading. If the police fail to respond, or respond in ways that clearly demonstrate a lack of sensitivity, perpetrators can interpret the police activity as official sympathy or even sanction." *Intimidation and Violence, supra*, at 17-18.

Penalty enhancement laws, such as the Wisconsin statute at issue, augment the punishment of predicate crimes defined in other criminal statutes when the criminal acts are committed because of discrimination. Section 939.645 provides that the penalty for an underlying crime of violence is increased⁵ if the defendant "[i]ntentionally selects the person against whom [the underlying crime] is committed or selects the property which is damaged or otherwise affected by [the underlying crime] because of the race, religion, color, disability, sexual orientation, national origin or ancestry of that person or the owner or occupant of that property." Wis. Stat. Ann. § 939.645(1)(b) (West. Supp. 1992).

A penalty enhancement statute thus sends an unambiguous message to the public that not only are acts of violence reprehensible but that acts of *discriminatory* violence are particularly egregious and will be punished more severely. Without the penalty enhancement, the legislature sends a message that discriminatory acts of violence cause no greater harm than nondiscriminatory acts of violence. As noted earlier, *see supra* Part I.A, discrimination that is manifested through violence is an especially serious harm that affects both victims and society as a whole. Hate crimes statutes such as section 939.645 are necessary tools in the arsenal of

⁵Specifically, section 939.645 increases the penalty for a non-Class A misdemeanor to a Class A misdemeanor penalty (maximum fine of \$10,000; maximum imprisonment of one year in the county jail); increases the penalty for a Class A misdemeanor to a felony penalty (maximum fine of \$10,000; maximum imprisonment of two years); and increases the penalty for felonies (fine may be increased by up to \$5,000; imprisonment may be increased by up to five years). Wis. Stat. Ann. § 939.645(2) (West Supp. 1992).

weapons to combat discriminatory violence because existing statutes have not adequately addressed discriminatory violence. For example, in California, which has one of the most comprehensive statutory schemes addressing discriminatory violence,⁶ the initial impetus for the passage of penal code section 422.7, the analogous statute to Wisconsin's law, was the Final Report of the California Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence. The commission found that "[e]nactment of a comprehensive civil rights statute with criminal penalties and amendments is necessary to effectively deter hate violence. *Existing civil and criminal laws fail to effectively protect the rights of hate violence victims.*" Attorney General's Comm'n on Racial, Ethnic, Religious and Minority Violence, *Final Report* 7 (1986) (emphasis added). Hate crimes laws promote the government's compelling interest in addressing hate crime, and they are a necessary means of deterring future violence and administering appropriate punishment for perpetrators of discriminatory violence.

II. THE WISCONSIN HATE CRIMES STATUTE REGULATES DISCRIMINATORY CONDUCT, NOT SPEECH OR THOUGHT

A. The Wisconsin Supreme Court Erroneously Focused on Motive and Thought Rather than Discriminatory Intent in Interpreting the Hate Crimes Statute

This Court has long held that conduct lacking expressive elements does not enjoy constitutional protection. *Spence v.*

⁶California has at least 18 statutes that deal with discriminatory threats or violence. *See* Cal. Civ. Code § 51.7 (West 1992); *id.* § 52.1; Cal. Gov't Code § 6254(f)(2) (West 1992); Cal. Penal Code § 190.2(a)(16) (West 1992); *id.* § 258; *id.* § 302; *id.* §§ 422.6-422.75; *id.* § 594.1; *id.* § 594.3; *id.* §§ 1170.75-1170.85; *id.* §§ 11410-13; *id.* § 11460.

Washington, 418 U.S. 405, 409 (1974). Most clearly, conduct that rises to the level of violence against person or property is exempt from constitutional shelter: "The First Amendment does not protect violence." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982). And, "like violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact, [discriminatory] practices are entitled to no constitutional protection." *Roberts v. United States Jaycees*, 468 U.S. 609, 628 (1984).

The Wisconsin statute in the instant case clearly regulates conduct and in no way implicates the First Amendment. As Justice Scalia stated in his concurring opinion in *Barnes v. Glen Theatre, Inc.*, "the challenged regulation must be upheld, not because it survives some lower level of First-Amendment scrutiny, but because, as a general law regulating conduct and not specifically directed at expression, it is not subject to First-Amendment scrutiny at all." 115 L. Ed. 2d 504, 515 (1991) (Scalia, J., concurring).

Nevertheless, the Wisconsin Supreme Court struck down the state's hate crimes penalty enhancement statute as unconstitutional, arguing that the statute punished "motive" and regulated "thought."⁷ The court found that the statute "violates the First Amendment directly by punishing what the Legislature has deemed to be offensive thought and indirectly by chilling free speech." *State v. Mitchell*, 169 Wis. 153, 163, 485 N.W.2d 807, 811 (1992). Establishing a distinction between the defendant's criminal act and the defendant's

⁷The Wisconsin Supreme Court's decision is clearly in the minority of state courts that have addressed the constitutionality of hate crimes legislation. The majority have upheld hate crimes statutes such as section 939.645 as constitutional. See *Kinser v. State*, 591 A.2d 894 (Md. 1991); *People v. Grupe*, 141 Misc. 2d 6, 532 N.Y.S.2d 815 (1988); *State v. Plowman*, 314 Or. 157, 838 P.2d 558 (1992); *State v. Hendrix*, 107 Or. App. 734, 813 P.2d 1115 (1991); *State v. Beebe*, 670 Or. 738, 680 P.2d 11 (1984).

motives for committing the act, the Wisconsin court majority found that the statute punished the defendant's biased motives through the sentence enhancement and thus unnecessarily infringed upon his First Amendment rights.

The *Mitchell* court wrongly interpreted the statute by attempting to divorce the physical act of violence from the motivation of the actor. *Id.* at 176, 485 N.W.2d at 817. Focusing on *motive* rather than on the *intent* that attaches to the act of violence completely misdirects the inquiry in evaluating hate crimes legislation. As in other crimes, the actor's motive per se is not an essential element to prove criminal liability for an act of discriminatory violence. A person may attack a member of a racial minority group for any number of reasons: intolerance and xenophobia toward people who are different from oneself, vengeance arising from the effects of economic competition, latent hostility rooted in past military conflict, or simply, overt hatred of another race. However, it is the *intent to commit a violent act against a member of a protected group* that must be examined, not the defendant's motive; in other words, criminal liability rests not on motivation but on proof that the defendant has committed an act of violence *because of* the victim's membership in a protected class.

Correctly focusing on the discriminatory intent of the defendant demonstrates that there is no real difference between a hate crimes statute and another antidiscrimination law that punishes actions based on discriminatory intent. Employment laws punish acts of employment discrimination; housing laws punish acts of housing discrimination; educational laws punish acts of educational discrimination. Hate crimes statutes do no more and no less: they punish acts of criminal discrimination — discriminatory violence.

B. Section 939.645 is Analogous to Other Antidiscrimination Laws that Forbid Discriminatory Treatment

Section 939.645 is clearly an antidiscrimination law.

Penalties may be enhanced when a defendant intentionally selects a victim "because of the race, religion, color, disability, sexual orientation, national origin or ancestry" of the victim. Wis. Stat. Ann. § 939.645(1)(b) (West Supp. 1992). Like other antidiscrimination laws, the penalty enhancement statute expresses the legislative intent that certain groups in society suffer from discrimination and require special protection; therefore, discriminatory acts against individuals who are members — or perceived to be members — of those groups are unacceptable and must be punished accordingly.

The language of the Wisconsin statute parallels the language found in both civil and criminal antidiscrimination laws. For example, Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment based on the employee's race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a) (1988). Individuals who are not hired *because of* their race, individuals who receive less pay *because of* the color of their skin, individuals who are not promoted *because of* their religion, individuals who are harassed *because of* their sex, individuals who are discharged *because of* their national origin — all the individuals in these situations and in numerous permutations are protected by Title VII from illegal discrimination. *See also* 42 U.S.C. §§ 1981, 1982, 1985(3).

In the criminal context, the federal criminal civil rights law codified at 18 U.S.C. section 242 prohibits violent acts committed against another person "by reason of his color, or race." 18 U.S.C. § 242 (1988). The law is derived from the Civil Rights Act of 1866, whose purpose was "to protect all persons in the United States in their civil rights and furnish means of vindication. In origin it was an antidiscrimination measure (as its language indicated), framed to protect Negroes in their newly won rights." *Screws v. United States*, 325 U.S. 91, 98-99 (1945).

The Wisconsin statute, section 939.645, reflects the state

legislature's determination that violent acts committed with discriminatory intent are more reprehensible than the same acts committed without discriminatory intent, just as firing someone from a job or denying them a loan or an apartment in which to live is more reprehensible when done for discriminatory reasons. The argument that penalty enhancement statutes such as section 939.645 punish biased thought and motive thus misses the basic point of hate crimes legislation. Hate crime statutes do not punish a perpetrator's thoughts; such statutes punish the act of discrimination committed against another person through violence. It is perfectly legal for the perpetrator of a hate crime to possess bigoted attitudes, and the Constitution guarantees the protection of those attitudes. However, it is unacceptable for individuals to cross the line between thought and action and commit criminal acts of violence against another person because of bigoted attitudes.

C. Discriminatory Motive May Be Considered in Criminal Sentencing

Even assuming that biased *motive* is implicated by the Wisconsin statute, there is no limitation in either law or logic that prohibits a court from considering a defendant's bad motive as a factor in enhancing punishment for a crime. In *Dawson v. Delaware*, 112 S. Ct. 1093 (1992), this Court held that a defendant's rights under the First Amendment were violated at sentencing when evidence of the defendant's membership in a white supremacist prison gang was introduced. The Court found that because there was no connection between the defendant's gang membership and his crime, "the evidence proved nothing more than Dawson's abstract beliefs." *Id.* at 1098.

Nevertheless, this Court made clear that "the Constitution does not erect a *per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because those beliefs and associations are protected by the

First Amendment." *Id.* at 1097. Thus, when racial beliefs are relevant to establishing a racial motive for committing a crime, evidence of those beliefs should be admissible at sentencing because a defendant's motive is a proper aggravating factor in determining the appropriate sentence. *Id.* at 1098; see also *Barclay v. Florida*, 463 U.S. 939, 949 (1983) ("the United States Constitution does not prohibit a trial judge from taking into account the elements of racial hatred in this murder").

The *Mitchell* court's peculiar interpretation of criminal motive in the instant case thus runs counter to the clear principles established by this Court in *Dawson v. Delaware* and *Barclay v. Florida* regarding the use of motive in criminal sentencing. The *Mitchell* court misconstrued the critical nexus between the defendant's motive and intent, and the defendant's act, and instead held that the defendant's thoughts and biases were unnecessarily regulated by the Wisconsin statute. In doing so, the Wisconsin Supreme Court erroneously divorced one necessary element of a crime from the other; under section 939.645, discriminatory intent is inextricably linked with the criminal act of violence. The Wisconsin hate crimes statute does no more than any other criminal statute that punishes what a legislature has found to be especially reprehensible conduct. Accordingly, this Court should uphold the law as constitutional.

III. EVEN IF IT AFFECTS SPEECH, THE WISCONSIN HATE CRIMES STATUTE IS CONSTITUTIONAL UNDER THE FIRST AMENDMENT

Assuming, arguendo, that section 939.645 implicates freedom of speech in some way, the effects of the statute on protected expression are minimal and fall well within First Amendment guidelines established by this Court. Whether viewed as a law regulating expressive conduct or as a law

affecting speech incidental to violent conduct, the Wisconsin penalty enhancement statute complies with constitutional mandates.

A. Section 939.645 is Not Overbroad

A statute is unconstitutionally overbroad when its language is so sweeping that it regulates not only criminal conduct but expression that is protected by the First Amendment. *Osborne v. Ohio*, 110 S. Ct. 1691 (1990); *Houston v. Hill*, 482 U.S. 451 (1987); *New York v. Ferber*, 458 U.S. 747 (1982). However, as this Court has long held, overbreadth analysis is "strong medicine" that must be applied carefully, and "where conduct and not merely speech is involved, . . . the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

The overbreadth line of cases is inapposite to the instant case because threats or violent acts against another person cannot possibly be considered expressive speech. At most, only ancillary speech is implicated, and any issue of ancillary speech must be determined on a case-by-case basis. *Brockett v. Spokane Arcade, Inc.*, 472 U.S. 491 (1985). Therefore, the question presented by the Wisconsin statute is a factual one and is totally inappropriate to support a facial challenge.

In the decision below, the Wisconsin Supreme Court nonetheless held that section 939.645 was unconstitutionally overbroad because it intruded upon protected speech through the use of a defendant's verbal statements as evidence of a biased motive. *State v. Mitchell*, 169 Wis. 153, 173-75, 485 N.W.2d 807, 815-16 (1992). Because a defendant's statements at the time of the violent act, as well as prior to the violent act, could be used as evidence of intentional selection, the court found that the statute produced a chilling effect on protected speech. *Id.* at 174-75, 485 N.W.2d at 816. Indeed,

the court went so far as to find that all of a defendant's prior statements and associations could be affected by the statute: "Because the circumstantial evidence required to prove intentional selection is limited only by the relevancy rules of the evidence code, the hate crimes statute will chill *every* kind of speech." *Id.* (emphasis added).

The court was wrong. On its face, section 939.645 punishes only discriminatory conduct, not speech: the statute enhances the punishment for violent acts that are committed because of the defendant's selection of a victim having membership within a protected group. Even as applied, the statute does not punish the words uttered by the defendant in the commission of the violent act. Words need not be used at all to prove intentional discrimination, and even if used, words simply become one form of circumstantial evidence that may be used to prove intent. A defendant's prior statements may be introduced as evidence of intent to discriminate just as prior statements may be introduced as evidence of other types of criminal intent. "It is no more a chilling of free speech to allow words to prove the act of intentional selection in this 'intentional selection' statute than it is to allow a defendant's words that he 'hated John Smith and wished he were dead' to prove a defendant intentionally murdered John Smith." *Mitchell*, 169 Wis. at 189, 485 N.W.2d at 822 (Bablitch, J., dissenting).⁸

The Wisconsin court's attempt to link the entire body of a defendant's prior statements and associations with the commission of a violent act directly conflicts with this Court's requirement that an overbreadth analysis must show both a real and a substantial regulation of protected expres-

⁸Nor is it more chilling to use a defendant's prior statements under section 939.645 than it would be to use a defendant's statements in proving any act of discrimination, as in housing, employment, voting rights, or other areas in which discrimination is prohibited.

sion. As the Wisconsin court itself noted, a defendant's prior statements cannot be introduced as evidence unless they are relevant to proving the intent attached to the particular criminal act. Words alone do not suffice; there must be a connection between the words and the criminal act. A defendant's speech — or anyone else's speech — is not chilled simply because a prior statement *may* be used as circumstantial evidence of discriminatory intent. The Wisconsin court's analysis thus goes well beyond a facial challenge and tests the statute as applied. The court's nexus is neither real nor substantial; it is speculative.

B. Section 939.645 Regulates Conduct and Satisfies the Requirements of *United States v. O'Brien*

Section 939.645 punishes violent conduct, and the defendant has offered no indication of what his violent actions were intended to express. Nevertheless, even if the defendant's conduct contained expressive elements that may be characterized as "speech," their punishment under section 939.645 is constitutional and complies with established First Amendment standards regarding expressive conduct.

Conduct that has an expressive element may infringe upon free speech values, but may be regulated if consistent with the First Amendment. In *United States v. O'Brien*, 391 U.S. 367 (1968), this Court established guidelines to determine when expressive conduct may be regulated by a state. A statute may be upheld if:

it is within the constitutional power of government; if it furthers an important or substantial government interest; if the government interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of the interest.

Id. at 377.

The Wisconsin penalty enhancement statute easily complies with all of the elements of the *O'Brien* test. First, without question, the regulation of both violent conduct and discrimination is within the power of government. Second, the government's interest in protecting racial minorities and other groups subject to historical and extant violence is not only an important or substantial interest, but a compelling governmental interest. See *supra* Part I; see also *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538, 2549 (1992). Third, the governmental interest in preventing discriminatory violence is not related to the suppression of free expression. Section 939.645 regulates violent conduct and contains no limitations on speech. If anything, the statute encourages speech by helping curb discriminatory violence, which itself inhibits the free expression of the victim and other members of protected groups through fear and suppression. Finally, the incidental restriction on alleged First Amendment freedoms is certainly no greater than is essential to the furtherance of the interest. There is no indication that the defendant's actions were intended to express anything other than violence, and any suggestion that section 939.645 chills speech because oral remarks or epithets may later be used as evidence is suspect at best; even if the premise is accepted by this Court as valid, such a restriction on speech is minuscule when balanced against the state's compelling interest in preventing and punishing violent discriminatory conduct.

C. Section 939.645 Falls Outside the Rule and Within the Exceptions for Content-Based Speech Enumerated in *R.A.V. v. City of St. Paul*

In *R.A.V. v. City of St. Paul*, 112 S. Ct. 2538 (1992), this Court invalidated as unconstitutional a St. Paul, Minnesota ordinance regulating expressive conduct such as cross burning or displaying a swastika that would arouse anger, alarm, or resentment on the basis of race, color, creed, religion, or gender. Holding that the St. Paul ordinance was

impermissibly content-based, the Court ruled that "[c]ontent-based regulations are presumptively invalid" and that even categories of normally unprotected speech such as defamation, obscenity, and "fighting words" may not be regulated based on their content. *Id.* at 2543-45.

The language contained in the Wisconsin hate crimes statute is clearly distinguishable from the ordinance implicated in *R.A.V.* Section 939.675, as an enhancement statute, regulates violent conduct, conduct that is invidiously discriminatory and devoid of expression. The statute is predicated on the perpetrator's committing certain criminal acts of violence, such as assault or battery. The statute contains no restrictions on speech itself or on conduct that may express elements of speech. And even if the questioned conduct is incidentally expressive, section 939.675 does not limit the conduct based on its content; rather it punishes conduct because of the conduct's detrimental effects on victims, members of protected categories, and society as a whole.

Even if viewed as a content-based regulation, section 939.675 falls within the exceptions enumerated by the *R.A.V.* Court as falling within the constitutional boundaries of the First Amendment. First, "[w]hen the basis for the content discrimination consists entirely of the very reason the entire class of speech at issue is proscribable, no significant danger of idea or viewpoint discrimination exists." *Id.* at 2545. Section 939.675 by design regulates violent conduct that is proscribed for the purpose of securing the civil rights of protected individuals. The statute specifically targets violence committed with discriminatory intent, thus reflecting the legislative finding that violent acts committed against particular groups for discriminatory reasons are more reprehensible than other violent acts and should be punished accordingly.

Under section 939.675, it is not the content of speech that is prohibited but the act that "embodies a particularly intolerable

ble (and socially unnecessary) *mode* of expressing *whatever* idea the speaker wishes to convey." *Id.* at 2549 (emphasis in original). Indeed, the majority opinion in *R.A.V.* illuminates the distinction between the statute implicated in *R.A.V.* and the statute in the instant case: "St. Paul has not singled out an especially offensive mode of expression — it has not, for example, selected for prohibition only those fighting words that communicate ideas in *threatening* (as opposed to a merely obnoxious) manner." *Id.* (emphasis added). Therefore, statutes that prohibit threats or acts of violence are an offensive mode of expression and can be regulated.

Furthermore, the Court in *R.A.V.* acknowledged that threats of violence are outside First Amendment protection when it discussed the validity of punishing threats against the President. *Id.* at 2546. "[T]he Federal Government can criminalize only those threats of violence that are directed against the President . . . since the reasons why threats of violence are outside the First Amendment (protecting individuals from the fear of violence, from the disruption that fear engenders, and from the possibility that the threatened violence will occur) have special meaning when applied to the person of the President." *Id.* (citations omitted). Therefore, it is not only clear that threats or acts of violence are outside the protection of the First Amendment, but certain types of threats, for example against the President or against a person who is a member or perceived to be a member of a targeted group, can be regulated because the state recognizes that the risk "is in its view greater there." *Id.*

Another exception proffered by the *R.A.V.* majority was when "words can . . . violate laws not against speech but against conduct . . . , [and] a particular content-based category of a proscribable class of speech can be swept up incidentally within the reach of a statute directed at conduct rather than speech." *Id.* at 2546. "Thus, for example, sexually derogatory "fighting words," among other words, may

produce a violation of Title VII's general prohibition against sexual discrimination in employment practices. . . . *Where the government does not target conduct on the basis of its expressive conduct, acts are not shielded from regulation merely because they express a discriminatory idea or philosophy.*" *Id.* at 2546-47 (emphasis added). Therefore, like the prohibition of sexually derogatory fighting words, the state can prohibit analogous prejudice-based threats and assaults. Again, section 939.675 does not regulate the speech of an actor independent of the actor's violent conduct. Oral epithets that may accompany the violent act are not themselves punished.

Finally, section 939.675 falls within the third *R.A.V.* exception because "there is no realistic possibility that official suppression of ideas is afoot." *Id.* at 2547. The statute does not in any way suppress the peaceful expression of ideas disfavoring one or more groups; the statute regulates violent conduct committed with the intent to discriminate against members of protected groups. In effect, as noted earlier, the statute encourages the exchange of ideas by allowing individuals to discuss freely their differences in attitude, rather than to resort to using violence to encourage fear and suppress discourse. And, as this Court itself stated in *R.A.V.*: "Where the government does not target conduct on the basis of its expressive content, acts are not shielded from regulation merely because they express a discriminatory idea or philosophy." *Id.* at 2546-47.

The Wisconsin hate crimes statute, section 939.675, targets discriminatory conduct, not speech, and thus falls outside the rule and within the exceptions expressed in *R.A.V. v. City of St. Paul*. The statute does not infringe on free speech in any way and should therefore be upheld as constitutional under the First Amendment.

CONCLUSION

For the foregoing reasons, the Wisconsin hate crimes statute is constitutional, and the decision of the Wisconsin Supreme Court should be reversed.

Respectfully submitted,

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Dated: January 1993

APPENDIX A

STATEMENTS OF INTEREST OF *AMICI CURIAE*

The National Asian Pacific American Legal Consortium (NAPALC) is a nonprofit, nonpartisan organization whose mission is to advance the legal and civil rights of Asian Pacific Americans through a national collaborative structure that pursues litigation, advocacy, public education, and public policy development. NAPALC is composed of three organizations based in major urban areas with significant Asian and Pacific Islander populations: the Asian American Legal Defense and Education Fund (New York), the Asian Law Caucus, Inc. (San Francisco), and the Asian Pacific American Legal Center of Southern California (Los Angeles).

Founded in 1974, the Asian American Legal Defense and Education Fund is a civil rights organization that addresses critical issues facing Asian Pacific Americans through community education, advocacy, and litigation. Program priorities include the elimination of anti-Asian violence, advancement of immigrant rights, employment and labor rights, and redress for Japanese American World War II internees.

The Asian Law Caucus, Inc. is a nonprofit, public interest legal organization whose mission is to promote, advance, and represent the civil rights of Asian and Pacific Islander communities. Since 1972, it has provided free and low-cost multilingual legal services, community education, and general advocacy in the areas of immigration, housing, employment and labor, and civil rights, including discriminatory hate violence. In recognition of the growing problem of anti-Asian violence, the Hate Violence Project was created to develop and implement a comprehensive program to assist Asian victims and to reduce the incidence of hate violence through legal assistance, community education, public policy, and advocacy.

The Asian Pacific American Legal Center of Southern California is a nonprofit legal organization dedicated to

serving the Asian communities through direct services, community education, leadership development, and advocacy. Founded in 1983, it provides multilingual legal and educational services, with programs focusing on immigration, family law, language rights, interethnic relations, dispute resolution, and civil rights advocacy.

One of the main goals of NAPALC has been to promote racial harmony and to eradicate ethnic and racial violence towards Asian communities. All three organizations comprising NAPALC have extensive knowledge and experience dealing with the issue of hate violence, particularly as it pertains to Asians.

American Citizens for Justice, Inc. (ACJ), was created in 1983 as a coalition of Asian Pacific Americans and other concerned individuals in the Detroit, Michigan and Midwest areas to address anti-Asian violence. The Asian American Center for Justice, the professionally staffed office of ACJ, provides services in legal consultation and education, monitoring anti-Asian violence, advocacy, and community education. ACJ has advocated for the constitutionality of ethnic intimidation statutes in the State of Michigan and throughout the country.

The Asian Law Alliance of Santa Clara County (ALA) is a nonprofit legal services agency serving the Asian and Pacific Islander communities, particularly low-income and limited-English-speaking refugees and immigrants since 1977. ALA offers free and low-cost legal representation, preventive community education, advocacy, and outreach in a variety of Asian languages. Its programs prioritize issues related to government benefits, immigration, housing, family law/domestic violence, and civil rights, including hate crimes.

Founded in 1969, Chinese for Affirmative Action (CAA) is a voluntary membership-supported organization dedicated to promote equality and justice for Asian Americans. CAA was instrumental in the 1987 formation of the Asian American Advisory Committee to the California Attorney General,

to address the rising tide of anti-Asian hostility in California, as well as other criminal justice problems in the Asian and Pacific Islander communities. The organization has rendered assistance to individuals who have been victims of racial hatred and discrimination, and, at the request of Asian Americans in diverse neighborhoods, has worked with individuals and public officials to reduce the level of intergroup tension.

The Chinese American Citizens Alliance (CACA) is the nation's oldest Asian American civil rights organization, established since 1895 to uphold equal rights for Chinese Americans. As a national membership-supported nonpartisan organization, CACA has participated in various challenges to legal actions that have impacted the Chinese American and Asian American community. CACA has consistently advocated for the passage of various hate crime laws and provided on-going hate crime awareness programs for the Chinese American community.

The Committee Against Anti-Asian Violence (CAAHV) is a nonprofit community-based organization that conducts education, organizing, and advocacy to combat the incidence of bias-related violence and police brutality, especially that directed against Asian Americans in the New York City area. CAAHV has testified to support passage of a hate crimes law in the State of New York and the establishment of an all-civilian Civilian Complaint Review Board in New York City.

The Japanese American Citizens League (JACL) is the largest Asian American civil and human rights organization in the United States, consisting of 113 chapters nationwide. Established as a non-profit organization in 1929, JACL has participated, either as a party or as *amicus curiae*, in various legal actions which have challenged racial prejudice and discrimination against Japanese Americans and other Asian Americans. JACL has advocated for, and supported, passage of various hate crime statutes, and monitors incidents of discriminatory hate violence.

The National Asian Pacific American Bar Association

(NAPABA) is a nationwide, nonprofit, nonpartisan organization of Asian Pacific American attorneys. Founded in 1989, NAPABA has over 2500 members and is dedicated to serving the needs of Asian Pacific American attorneys and their communities. Since its inception, stemming the rising tide of racial violence, particularly anti-Asian violence, has been one of NAPABA's top priorities. It has produced education materials on racial violence, and its members have testified on behalf of hate crime legislation and have been available as a resource to victims, families of victims, and communities affected by incidents of hate crimes.

The Organization of Chinese Americans, Inc. (OCA) is a nonprofit, nonpartisan advocacy organization that was founded in 1973. As one of the oldest national Chinese American civil rights organizations, OCA seeks to secure social justice, equal opportunity, and equal treatment of Chinese Americans and Asian Americans, and to eliminate prejudices and ignorance about Chinese Americans and Asian Americans. OCA has been an advocate for the passage, strict implementation, and enforcement of hate crime legislation. The organization has produced and disseminated hate crime educational materials.

APPENDIX B

RECENT EXAMPLES OF HATE CRIMES AGAINST ASIANS AND PACIFIC ISLANDERS*

June 1982	Vincent Chin, a Chinese American, was beaten to death by two unemployed auto workers in Detroit who blamed him for the downfall of the American automobile industry.
Dec. 1982	Crosses were burned on the lawn of a Filipino family in San Leandro, California.
May 1983	A Vietnamese high school student, Thong Huynh, was stabbed to death in Davis, California by a white student after racial taunting of Vietnamese students by the white students.
Sept. 1987	A Cambodian American teenager was drowned near Lowell, Massachusetts by a youth shouting racial slurs.
Sept. 1987	An Asian Indian physician was attacked with a bat by three white assailants in Jersey Heights, New Jersey. The victim was hospitalized for several days and has undergone extensive rehabilitation for head trauma.
Jan. 1989	Five Southeast Asian children were gunned down by Patrick Purdy in Stockton, California. Twenty children were wounded.
July 1989	Ming Hai "Jim" Loo, a Chinese American, was beaten to death by men blaming him for American casualties in Vietnam.
Nov. 1989	Three Asian American shop owners, two Chinese American and one Korean American, were beaten and racially taunted by a band of white teens in Castro Valley, California.

*This list is by no means exhaustive; rather, it is illustrative of the many instances of violent discriminatory acts perpetrated against Asians and Pacific Islanders. The list is compiled from various sources, including newspaper and broadcast media reports and personal accounts presented to *amici curiae*. A complete list of sources is available from counsel for *amici*.

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- Dec. 1989 Forty youths, alleged to be members of the gang "Master Race," shouted racial epithets and attacked five Asian American youths in Queens, New York. One victim, struck by a broken glass bottle, required eighty five stitches.
- Mar. 1990 A thirty-one-year-old Chinese immigrant was fatally stabbed on a subway train in New York City. Prior to stabbing the victim, the assailant repeatedly called the victim "Eggroll."
- Apr. 1990 Two Japanese students were attacked and beaten in La Crosse, Wisconsin by white students.
- Apr. 1990 Oklahoma Ku Klux Klan leader Joe Grego made this statement, "Ask a white worker how it feels to give up a job that feeds his family to a crop of dog-eating gooks from Asia. You pick up the rifle and solve the Asian problems just like they ought to be solved."
- May 1990 A Hmong youth, riding with two white women coworkers, was beaten and racially taunted by white assailants in Yuba County, California.
- May 1990 Three Vietnamese men were assaulted in Brooklyn, New York; one man was assaulted with a claw-hammer. Mistaking the men for Koreans, the assailants shouted: "Koreans, what are you doing here!" and "Get out of America!"
- June 1990 A Cambodian American, Heng Lim, was killed by a white male with a 2x3 board in South Philadelphia, Pennsylvania.
- Aug. 1990 A Vietnamese teenager was beaten and kicked to death by two "skinheads" in Houston, Texas.
- Aug. 1990 After being called a "chink" and a "gook," a Chinese man was attacked by two white men carrying a baseball bat and a tire iron in Bensonhurst, New York.
- Sept. 1990 The Greater Phoenix Chinese Christian Church in Phoenix was defaced with racial graffiti and bullet holes.
- Sept. 1990 Two Japanese men driving in their car in San Francisco were struck by the car of a white male. When questioned about why he swerved into the

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- victims' car, the perpetrator said it was because they were "gooks".
- Oct. 1990 Four white men linked to the Ku Klux Klan seriously beat six Japanese students in Denver, Colorado.
- Oct. 1990 The Japanese American Citizen's League's headquarters in Glendale, Arizona was defaced with a painted swastika and the words "White Supreme."
- Oct. 1990 A Filipino child was held hostage by a man at the St. Patrick's Church in San Francisco, California who said he hated Orientals. The man held a knife to the 3-year-old child's throat and cheek in front of the horrified congregation after church service.
- Nov. 1990 JACL's Robert Matsuishi received death threats after speaking on television about redress payments for Japanese internees during World War II.
- Jan. 1991 As several Koreans were playing golf in Milpitas, California, one of them was attacked and choked by a white man, who told him: "We're big Americans . . . we don't need you . . . Oriental boys here."
- Jan. 1991 "KKK" was spray-painted on the home of a Samoan man in Oldsmar, Florida.
- Feb. 1991 The windows of a car owned by a Filipino American in San Jose, California were shot out and the words "Die Nip" and "Pearl Harbor" spray-painted on the side.
- May 1991 A Chinese foreign student was attacked by seven white high school students on the Cornell University campus because he is Asian.
- June 1991 Kimochi, Inc., a Japanese American senior citizens organization in San Francisco, California, received threatening letters saying "Death to all Former Internees."
- June 1991 Two Japanese American women were assaulted at a restaurant in Huntington Beach, California by seven men and women who taunted, shoved, punched and poured drinks on them. The women were speaking in Japanese and the attackers insisted that they speak English.
- June 1991 A cross was burned in the yard of a Filipino Ameri-

- can family in Albuquerque, New Mexico.
- Aug. 1991 A Chinese American high school graduate was beaten unconscious by members of a white supremacist skinhead group in Fullerton, California.
- Aug. 1991 Seven Thai monks and two Buddhists at a Thai Buddhist monastery were murdered execution-style in Maricopa County, Arizona.
- Nov. 1991 In Laguna Beach, California, the home of a Chinese American was vandalized with "swastikas" and the words "Oriental Out" "Chinese Out".
- Nov. 1991 In Claremont, California, the home of a Japanese American was vandalized, with feces left on the front porch and message "You riceball, eat shit" spray painted on the garage.
- Nov. 1991 The South East Japanese Center in Norwalk, California had racist graffiti scrawled over the building. The words "Nips" filled three windows and "Go Back to Asia" defaced a desk. Shattered glass, shredded documents and overturned furniture littered the floors of the center. White paint covered pictures, photos, walls and windows. The week before, twenty cars parked at the center's parking lot had their tires slashed during a meeting.
- Nov. 1991 A Chinese American woman in San Francisco was verbally and physically assaulted by two white males while doing her laundry. She was called "Chink", "Little Shit" and told to "Go back to your own country."
- Dec. 1991 Three molotov cocktails were thrown at the home of an elderly Japanese couple in San Leandro, California.
- Dec. 1991 A Vietnamese restaurant in San Jose, California, was set on fire and spray painted with the words: "Merry Christmas Chink."
- Dec. 1991 Korean grocery owners in New York City were physically assaulted and told "You fucking Chinese get out of the U.S.A."
- Dec. 1991 In Compton, California, a Thai woman was physically assaulted by two men wielding baseball bats

- who mistook her for a Korean.
- Dec. 1991 In Sacramento, California, a Japanese American-owned rice cake store was shot with a pellet gun and the window of the owner's daughter's car was shattered the next day.
- Jan. 1992 An African American and Asian American couple (with a six month old baby) in Modesto, California, was verbally abused and physically assaulted by a group of teenagers.
- Jan. 1992 At the headquarters of the Japanese American Citizens League, the group's planned fifty-year commemoration of Japanese American internment camps prompted a recorded bomb threat: "I'll show you a year of remembrance, you dirty Japs. You just watch out for bombs planted around your day of remembrance. We'll get you, you dirty pigs."
- Feb. 1992 A group of Japanese American Girl Scouts, selling cookies in front of a supermarket in West Los Angeles, California, are verbally harassed by passersby who state, "We only buy from Americans."
- Feb. 1992 A fourteen-year-old Korean boy in Bronx, New York was chased by approximately twenty youths who called him racially derogatory names and beat him with a bat, causing injuries that required hospitalization for five days.
- Mar. 1992 At Pomona College in Southern California, a large sign that originally read "Asian American Studies Now" was defaced to read "Asian Americans Die Now."
- Mar. 1992 In Torrance, California, a Thai man was beaten in the laundry room of his apartment complex by a white man who demanded to know if he was Japanese.
- Mar. 1992 In Walnut, California, a third generation Japanese woman found her front yard littered with toilet paper and graffiti painted on the garage saying "Japs Go Home."
- Apr. 1992 An Asian Indian doctor in Jersey City Heights, New Jersey was struck in the head and sprayed with mace

- by youths who shouted "Hindu, Go Home."
- Apr. 1992 At the San Diego State University, a swastika was found painted over a sign that read "Asian Americans for Higher Education."
- Apr. 1992 In Sacramento, California, a Japanese American mother reported that her son was being repeatedly verbally and physically assaulted at his junior high school by a classmate who bragged that his parents were members of the Ku Klux Klan.
- Apr. 1992 Also in Sacramento, two teenage Japanese Americans were verbally and physically assaulted at their hotel by suspected skinheads.
- Apr. 1992 In Northern California, a Japanese American woman and her German American husband were harassed by their neighbor, a white woman, who yelled "You Nazi! You should take your Jap wife and get out!"
- Apr. 1992 During the Los Angeles riots, in addition to the burning and destruction of the thousands of Asian businesses, the following occurred:
- Thanh Lam, a young man of Chinese and Vietnamese ancestry, was brutally murdered by rioters in Compton, California.
- A Japanese American motorist was attacked by a band of enraged rioters. The man sustained heavy injuries to his eye, ear and mouth, and required twenty-four stitches in his head.
- A Japanese American man employed at a travel agency was shot in the thigh while he was walking to his car.
- An elderly Japanese American man was dragged out of his vehicle and assaulted.
- May 1992 A nineteen-year-old Asian male was physically assaulted by two strangers yelling racial slurs in the parking lot of an Auburn, California restaurant.
- June 1992 In Huntington Beach, California, four Asian teenagers were assaulted by three white males wielding a steel anti-theft device who smashed the victims' car windshield while calling them "Japs" and "Nips." Two of the victims sustained deep wounds.

- Aug. 1992 A young Vietnamese student in Coral Springs, Florida was brutally beaten to death by fifteen young men who shouted racially derogatory remarks at the victim.
- Aug. 1992 The home of a Japanese American family in Anaheim, California is spray-painted with swastikas and graffiti saying "Fuck You Nips."
- Sept. 1992 A delicatessen in Manteca, California owned by a South Asian couple was burned down after the couple received threatening telephone calls saying "You dirty Indians, get out of here. Go back to India where you belong."
- Oct. 1992 A Chinese American male college student is beaten by five teenagers on a bus in San Francisco. Before the beating, the victim heard racial slurs such as "Get that Chinaman" and "Chink."
- Nov. 1992 A Chinese immigrant girl was attacked by teenagers who spray-painted her face black in Manhattan, New York.
- Dec. 1992 The home of a Chinese American family in La Habra, California was spray-painted with graffiti saying "KKK." The latest incident was the fifth graffiti incident affecting the same family during a six month period.

APPENDIX C

STATE HATE CRIMES STATUTES

Cross Burning

- Ariz. Rev. Stat. Ann. § 13-1504 (1989)
- Cal. Penal Code § 11411 (West Supp. 1992)
- Conn. Gen. Stat. Ann. § 46a-58(c) (West 1986)
- Fla. Stat. Ann. § 876.17 (West 1976)
- Ga. Code Ann. § 16-11-37 (Harrison 1990)
- Md. Ann. Code art. 27, § 10A (1987)
- N.C. Gen. Stat. § 14-12.12 (1986)
- R.I. Gen. Laws § 11-53-2 (1990)
- S.C. Code Ann. § 16-7-120 (Law. Co-op. 1985)
- Vt. Stat. Ann. tit. 13, § 1456 (Supp. 1990)
- Va. Code Ann. § 18.2-423 (1988)
- Wash. Rev. Code Ann. § 9A.36.080 (Supp. 1991)

Data Collection

- Cal. Penal Code § 13023 (West Supp. 1991)
- Conn. Gen. Stat. Ann. § 29-7m (West 1990)
- D.C. Code Ann. § 22-4002 (Supp. 1992)
- Fla. Stat. Ann. § 877.19 (West Supp. 1992)
- Idaho Code § 67-2905 (1989)
- Ill. Rev. Stat. ch. 127, para. 55a(31) (Supp. 1991)
- Me. Rev. Stat. Ann. tit. 5, § 4660 (1989)
- Mass. Gen. Laws Ann. ch. 22C § 32 to 35 (West 1992)
- Md. Ann. Code art. 88B, § 9 (1985 & Supp. 1990)
- Minn. Stat. Ann. § 626.5531 (West Supp. 1992)
- Okla. Stat. Ann. tit. 21, § 850(G) (West Supp. 1992)
- Or. Rev. Stat. § 181.550 (1991)
- R.I. Gen. Laws § 42-28-46 (1988)
- Tex. Gov't Code Ann. § 411.046 (West Supp. 1993)

Desecration/Defacement of Religious Objects or Property

- Ala. Code § 13A-11-12 (1982)
- Ariz. Rev. Stat. Ann. § 13-1604 (1989)
- Ark. Stat. Ann. § 5-71-215 (1987)
- Cal. Penal Code § 11411 (West Supp. 1992)
- Conn. Gen. Stat. Ann. § 46A-58 (West 1986)
- Colo. Rev. Stat. § 18-9-113 (1986 & Supp. 1992)

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- Del. Code Ann. tit. 11, § 1331 (1987 & Supp. 1990)
- Haw. Rev. Stat. § 711-1107 (1985)
- Idaho Code § 18-6201 (1987)
- Ill. Rev. Stat. ch. 38, § 21-1.2 (Supp. 1991)
- Ind. Code Ann. § 35-43-1-2 (West Supp. 1992)
- Kan. Stat. Ann. § 21-4111 (1988)
- Ky. Rev. Stat. Ann. § 525.110 (Michie/Bobbs-Merrill 1990)
- Me. Rev. Stat. Ann. tit. 17-A § 507 (1983 & Supp. 1990)
- Md. Ann. Code art. 27, § 470A (Supp. 1990)
- Mass. Gen. Laws Ann. ch. 266, § 98 (West 1990)
- Miss. Code Ann. § 97-17-39 (Supp. 1991)
- Mo. Rev. Stat. § 574.085 (Supp. 1991)
- N.J. Stat. Ann. § 2C:33-9 (West 1982)
- Or. Rev. Stat. § 166.075 (1990)
- 18 Pa. Cons. Stat. Ann. § 5509 (Purdon 1985)
- Tenn. Code Ann. § 39-17-311 (Supp. 1990)
- Va. Code Ann. § 18.2-127 (Supp. 1991)

Desecration of a Place of Worship

- Ariz. Rev. Stat. Ann. § 13-1604 (1989)
- Ga. Code Ann. § 16-7-26 (Harrison 1990)
- Mass. Gen. Laws Ann. ch. 266, §§ 2, 127A (West 1990)
- N.J. Stat. Ann. § 2C:33-9 (West 1982)
- N.M. Stat. Ann. § 30-13-1 (1984)
- Okla. Stat. Ann. tit. 21, § 1765 (West 1983)
- Va. Code Ann. §§ 18.2-127, 18.2-138 (Supp. 1991)

General Civil Rights Statute - Criminal

- Idaho Code §§ 18-7301 to -7303 (1987)
- Mass. Gen. Laws Ann. ch. 265, § 37 (West 1990)
- Mont. Code Ann. § 45-5-221 (1989)
- N.D. Cent. Code § 12.1-14-05 (1985)
- 18 Pa. Cons. Stat. Ann. § 2710 (Purdon 1983)
- R.I. Gen. Laws § 9-1-35 (1985)
- S.C. Code Ann. § 16-5-10 (Law. Co-op. 1985)
- Vt. Stat. Ann. tit. 13, § 1457 (Supp. 1990)
- Wis. Stat. Ann. § 895.75 (West Supp. 1990)

General Civil Rights Statute - Civil

- Neb. Rev. Stat. § 20-148 (1987)
- N.Y. Civ. Rights Law §§ 40-c, 40-d (McKinney 1991)
- Or. Rev. Stat. § 30.190 (1988)

General Intimidation/Harassment - Criminal

- Ala. Code § 13A-11-12 (Supp. 1982)
- Ariz. Rev. Stat. Ann. § 13-1504 (1989)
- Ark. Stat. Ann. § 5-71-207 (1987)
- Cal. Penal Code §§ 422.6, 11410 (West Supp. 1992)
- Colo. Rev. Stat. § 18-9-121 (Supp. 1990)
- Conn. Gen. Stat. Ann. § 53-37 (West 1985)
- Ga. Code Ann. § 16-11-39 (Harrison 1992)
- Idaho Code §§ 18-7901 to -7904 (1987)
- Ill. Rev. Stat. ch. 38, § 12-7.1 (West Supp. 1993)
- Iowa Code Ann. § 729.5 (West Supp. 1991)
- Me. Rev. Stat. Ann. tit. 17 §§ 2931-2932 (1983 & Supp. 1990)
- Mass. Gen. Laws Ann. ch. 265, § 39 (West 1990)
- Md. Crim. Law Code Ann. § 470A9b)-(c) (1992)
- Mich. Comp. Laws Ann. § 750.147b (West 1991)
- Minn. Stat. Ann. § 609.2231 (West Supp. 1991)
- Mo. Ann. Stat. § 574.093 (Vernon Supp. 1992)
- Nev. Rev. Stat. § 207.185 (1991)
- N.J. Stat. Ann. §§ 2C:12-1, 2C:33-4, 2C:43-7, 2C:44-3 (1991)
- N.Y. Penal Law § 240.31 (McKinney Supp. 1989)
- N.C. Gen. Stat. § 14-12.13 (1986)
- N.D. Cent. Code § 12.1-14-04 (1985)
- Okla. Stat. Ann. tit. 21, § 850 (West Supp. 1992)
- Or. Rev. Stat. §§ 166.155, 166.165 (1991)
- 18 Pa. Cons. Stat. Ann. § 2710 (Purdon 1983)
- R.I. Gen. Laws § 11-42-3 (Supp. 1990)
- S.D. Codified Laws Ann. § 22-27-1 (1988)
- Tenn. Code Ann. § 39-17-309 (Supp. 1990)
- Wash. Rev. Code Ann. § 9A.36.080 (Supp. 1991)
- Wis. Stat. Ann. § 943.012 (West Supp. 1990)

General Intimidation/Harassment - Civil

- Ariz. Rev. Stat. Ann. § 13-1604 (1989)
- Cal. Civ. Code §§ 51.7, 52.1 (West Supp. 1992)

- D.C. Code Ann. § 22-4004 (Supp. 1992)
- Me. Rev. Stat. Ann. tit. 5, §§ 4681 (Supp. 1992)
- Mass. Gen. Laws Ann. ch. 12, §§ 11H to 11J (West 1990)
- Mo. Rev. Stat. § 537.523 (Supp. 1991)
- N.C. Gen. Stat. § 99D-1 (1992)
- Ohio Rev. Code Ann. § 2921.45 (Anderson 1987)

Harassment through Publications/Group Libel

- Fla. Stat. Ann. § 836.11 (West 1976)
- Mass. Gen. Laws Ann. ch. 272, § 98C (West 1990)

Disturbance of Religious Worship

- Ark. Stat. Ann. § 5-71-207 (1987)
- Cal. Penal Code §§ 302, 11412 (West Supp. 1991)
- Fla. Stat. Ann. § 871.01 (1976)
- Idaho Code § 18-6201 (1972)
- Md. Ann. Code art. 27, § 470A (Supp. 1990)
- Mass. Gen. Laws Ann. ch. 272, § 38 (West 1990)
- Mich. Stat. Ann. § 28.366 (Callaghan 1990)
- Minn. Stat. Ann. § 609.28 (West 1987)
- Miss. Code Ann. § 97-35-17 (1973)
- Nev. Rev. Stat. § 201.270 (1986)
- N.M. Stat. Ann. § 30-13-1 (1984)
- N.Y. Penal Law § 240.21 (McKinney 1989)
- Okla. Stat. Ann. tit. 21, §§ 914, 915 (West 1983)
- S.D. Codified Laws Ann. § 22-27-1 (1988)
- Va. Code Ann. § 18.2-415 (Supp. 1991)
- W. Va. Code § 61-6-13 (1989)

Paramilitary Training

- Ark. Stat. Ann. § 5-71-302 (1985)
- Cal. Penal Code § 11460 (West 1982)
- Colo. Rev. Stat. § 18-9-120 (1986)
- Conn. Gen. Stat. Ann. § 53-206B (West 1986)
- Fla. Stat. Ann. § 790.29 (West Supp. 1991)
- Idaho Code §§ 18-8101 to -8105 (1987)
- Ill. Rev. Stat. ch. 129, § 220.94a (West Supp. 1991)
- Mich. Stat. Ann. § 28.796(1) (Callaghan 1990)

Mo. Rev. Stat. § 574.070 (Supp. 1991)
 Neb. Rev. Stat. § 28-1481 (1989)
 N.C. Gen. Stat. § 14-288.20 (1986)
 N.J. Stat. Ann. § 2C:39-14 (West 1991)
 Or. Rev. Stat. § 166.660 (1990)
 R.I. Gen. Laws §§ 11-55-2, 11-55-3 (Supp. 1990)
 Va. Code Ann. §§ 18.2-433 (1988)

Secret Societies

N.C. Gen. Stat. §§ 14-12.2 to -12.6 (1986)

Sentence Enhancement

Cal. Penal Code §§ 190.2(a)(16), 422.7, 422.75, 1170.75,
 1170.85 (West Supp. 1992)
 D.C. Code Ann. § 22-4003 (Supp. 1992)
 Fla. Stat. Ann. § 775.085 (Supp. 1992)
 Ill. Rev. Stat. ch. 38, § 1005-5-3.2 (Supp. 1993)
 Mont. Code Ann. § 45-5-222 (1991)
 N.H. Rev. Stat. Ann. § 651:61(g) (1986 & Supp. 1992)
 Utah Code Ann. § 76-3-203.3 (1992)
 Vt. Stat. Ann. tit. 13, § 1455 (Supp. 1991)

Threats to Immigrants

R.I. Gen. Laws § 11-53-3 (Supp. 1990)

Wearing of Masks/Hoods/Disguises

Conn. Gen. Stat. Ann. § 53-37a (West 1985)
 Fla. Stat. Ann. § 876.12 (West Supp. 1991)
 Ga. Code Ann. § 16-11-38 (Harrison 1990)
 Ill. Rev. Stat. ch. 38, para. 12-4 (Supp. 1991)
 La. Rev. Stat. Ann. § 14:313 (West 1986)
 Mich. Stat. Ann. § 28.628 (Callaghan 1990)
 Minn. Stat. Ann. 609.735 (West 1987)
 N.C. Gen. Stat. §§ 14-12.7 to -12.11, 14-12.14 (1986)
 Okla. Stat. Ann. tit. 21, § 1301 (West 1983)
 S.C. Code Ann. § 16-7-110 (Law. Co-op. 1985)
 Tenn. Code Ann. § 39-17-309(c) (Supp. 1990)
 Va. Code Ann. § 18.2-422 (1988)
 W. Va. Code § 61-6-22 (1989)
 Wis. Stat. Ann. § 939.641 (West 1985)